

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.316 OF 2023

1. State of Goa Through its Chief Secretary,
Having Office at Secretariat, Porvorim Goa.
2. The Director, Government of Goa,
Directorate of Settlement of Survey & Land,
Records, Collectorate Building, Swami
Vivekanand Road, Near Military Head Qts,
North Goa, Panaji Goa.
3. Executive Engineer, Work Division VI,
Irrigation Dept, Bicholim, GoaPetitioners.

Versus

1. Shri Santosh Ramakant Bhat, son of
Ramakant Bhat, age 47 years, priest
married,
2. Smt Vaibhavi Santosh Bhat, Wife of Shri
Santosh Ramakant Bhat, age 39 years,
married,housewife Both permanent
resident of H.No 320/2, Priol, Mardol,
Ponda Goa
Presently residing at H.No G/190(New)
Ward No 6, Nirvana Nest, Gaulem Bhat,
Chimbel , Tiswadi Goa
3. Smt Parvati Mahadev Sawant, Widow of
late Mahadev Sawant, Age 75 years,
housewife,
4. Shri Rajendra Mahadev Sawant, Son of late
Mahadev Sawant, age 50 years, married,
service
5. Smt Rasika Rajendra Sawant, Wife of
Rajendra Sawant, age 39 years, married,
housewife
6. Shri Suresh Mahadev Sawant, Son of late
Mahadev Sawant, age 45 years, service,

married,

7. Smt Sunanda Suresh Sawant, Wife Shri Suresh Mahadev Sawant, age 43 years, married, housewife
Respondent No 4 to 8 are resident of H.No 261, Sawantwada, Parye, Sattari, Goa
8. Smt Janki Yeso Gawas, daughter of late Mahadev Sawant, Widow of late Yeso Gawas, Age 47 years, housewife, resident of H.No 104, Madhala wada, Shirol, Keri, Sattari. Goa
9. Smt Subhadra Arjun Naik, daughter of late Mahadev Sawant, widow of late Arjun Naik, Age 41 years, housewife, resident of H.No 302, Jambhul Bhat, Maem, Bicholim-Goa
10. Smt Suchitra Gitesh Gaonkar, daughter of late Mahadev Sawant, wife of Shri Gitesh Shiva Gaonkar Age 31 years, married, service,
11. Shri Gitesh Shiva Gaonkar, son of Shiva Gaonkar, age 37 years, service, Respondent No 10 and 11 Both resident of H.No 114, Navem Aglote, Sancordem, Goa
12. Smt Mogre Ganesh Sawant, widow of late Ganesh Sawant, age 77 years, housewife, resident of H.no 265, Sawantwada, Parye, Sattari, Goa
13. Smt Rupavanti Budhaji Usapkar, daughter of late Ganesh Sawant, widow of late Budhaji Shankar Usapkar, age 50 years, married, housewife, resident of H. No. not know, Bharadwadi, Vazare, Dodamarg, Sindhudurg.
14. Smt Sita Rama Pirankar, Daughter of late Ganesh Sawant, Wife of Rama Devu Pirankar, age 42 years, married, housewife,
15. Shri Rama Devu Pirankar, Son of Devu

Pirankar, Age 46 years, married,
unemployed,
Defendant No 15 and 16 Both resident of
H.no 270, Talewadi, Matne, Dodamarg,
Sindhudurg, State of Maharashtra

16. Smt Rasika Mahesh Gaonkar, Daughter of late Ganesh Sawant, Wife of Shri Mahesh Shivram Gaonkar, Age 42 years, married, housewife,
17. Shri Mahesh Shivram Gaonkar, Son of Shivram Gaonkar, age 44 years, married, service, Respondent No 17 and 18 both resident of H. No 435, near ITI, Honda, Sattari, Goa
18. Smt Prema Narayan Shiroadkar, daughter of Late Ganesh Sawant, wife of Narayan Shablo Shiroadkar, age 40 years, married, housewife
19. Shri Narayan Shablo Shiroadkar, Son of Shablo Shiroadkar, age 45 years, married, service, Defendant Nos 19 and 20 Both residents of H. No 24, Vathadev, Sarvan, Bicholim, Goa
20. Smt Nilima Divakar Parab, daughter of late Ganesh Sawant, wife of Shri Divakar Dattaram Parab, age 39 years, married, housewife,
21. Shri Divakar Dattaram Parab, Son of Dattaram Parab, Age 46 years, married, service,
Defendant nos 19 and 20 Both resident of H.No 260 Khutwalwada Alorna, Pernem Goa.
22. Adv Mahendra Narahari Ekawade, Son of Narahari Ekawade, Age 46 years, married, Resident of H no 218, Kudenm, Sankhali, Bicholim, Goa

....Respondents.

Ms. Sulekha Kamat, Addl. Govt. Advocate Advocate for the
petitioners.

CORAM: BHARAT P. DESHPANDE, J

DATE: 15th February 2024

ORAL JUDGMENT.:

1. Rule. Rule is made returnable forthwith.
2. Heard finally at the stage of admission.
3. Heard Ms S. Kamat, learned Addl. Govt. Advocate for the petitioners. Affidavit of service of notice on the respondent nos.1 and 2 who are original plaintiffs and the contesting parties is filed on record stating that they are served. However, none present for the said respondents.
4. For the orders which I proposed to pass, notice to the other respondents is not necessary.
5. The short issue involved in the present petition is rejection of the application for condonation of delay in filing written statement.
6. Ms Kamat submits that petitioners are defendants nos.1, 2 and 3 in a suit filed by the respondent nos.1 and 2 for declaration and injunction. Said Civil Suit is pending before the Additional District Judge, Mapusa bearing Civil Suit No.34/2021. She submits that though summons were served on the petitioners somewhere in the month of January 2022, written statement could not be filed within period of 30 days or extended period of 90 days, for the reasons that

initial advocate who was appointed to defend the petitioners was changed and later on draft of written statement was pending for approval. She submits that delay of 127 days in filing written statement was explained in the application for condonation of delay and taking written statement on record. She submits that even the plaintiffs/respondent nos.1 and 2 gave no objection for condonation of delay. Other respondents did not object. However, the learned trial Court considered that there is no sufficient ground to condone the delay and accordingly, application for delay stands rejected, which is challenged in the present petition.

7. Suit is filed for various reliefs including declaration, cancellation of sale deed, recovery of money, claiming that property in dispute was purchased by the plaintiffs through defendants nos. 4 to 22 claiming that they are the landlords. However, subsequently, it was observed that said defendants are not the actual owners and that property stands recorded in the name of the Government. Though petitioners received summons in the month of January 2022, time was consumed for appointment of government advocate from the panel and subsequently another advocate was appointed. Thereafter draft of the written statement was prepared which was forwarded to the concerned department for approval.

8. Only after approval of the draft of the written statement, application was filed for condonation of delay of 127 days by

explaining such delay. It is matter of record that respondent nos.1 and 2 who are the plaintiffs in the suit gave no objection on such application and practically permitted the petitioners to place written statement on record. Other defendants also did not object. However, learned trial Court inspite of the said fact that the plaintiffs gave no objection, considers that such no objection cannot come in the way of the Court in finding out whether there is actually any reason sufficient to condone the delay.

9. Observations of the learned trial Court in paragraphs 7, 8 and 9 would clearly go to show that petitioners in fact explained as to why there was a delay in filing a written statement.

10. Be that as it may, when the plaintiffs did not object to condone the delay and allowing the petitioners to file written statement, matter could have been simply allowed at the said stage without taking suo motu application for condonation of delay and going into reasons. It is no doubt true that petitioners were supposed to explain the delay satisfactorily. However, when the other side is not objecting for condonation of delay, application could have been allowed.

11. Even otherwise, application filed for condonation of delay, if perused, specifically discloses the dates as to when earlier advocate was appointed, filed was moved and was pending for approval from the concerned department.

12. It is now well settled that the aspect of delay could be

considered liberally. Parties should not be denied the opportunity to contest the matter on merits. Thus, the impugned order needs interference as it failed to consider the settled proposition of law while condoning the delay and allowing the parties to contest the matter on merits. At most the trial Court could have allowed the application by imposing some costs. However, since the plaintiffs and other defendants gave no objection for condoning the delay, there was also no need for discussing the matter further. Simply application could have been allied.

13. Order clearly suffers from non-application of mind and wrong exercise of the jurisdiction. Accordingly, the impugned order is quashed and set aside. Application for condonation of delay in filing written statement stands allowed.

14. Rule is made absolute in the above terms.

15. Writ Petition stands disposed of.

BHARAT P. DESHPANDE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2024.02.16 10:45:38 +05'30'